

**LFC Requester:****Caroline Malone**

**AGENCY BILL ANALYSIS  
2016 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:**

**[LFC@NMLEGIS.GOV](mailto:LFC@NMLEGIS.GOV)**

*and*

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*{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}*

**SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

*Check all that apply:*

**Original**      X   **Amendment**            
**Correction**           **Substitute**          

**Date**   1/9/2016  

**Bill No:**   HB-74  

**Sponsor:**   Stephanie Garcia Richard  

**Agency Code:**   Attorney General's Office  

**Short**      DWI Tests, Penalties, and  

**Person Writing**      Jeres S. Rael, AAG  

**Title:**      License Revocation  

**Phone:**   505-629-9131   **Email**   [jrael@nmag.gov](mailto:jrael@nmag.gov)  

**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

| Appropriation |      | Recurring<br>or Nonrecurring | Fund<br>Affected |
|---------------|------|------------------------------|------------------|
| FY16          | FY17 |                              |                  |
|               |      |                              |                  |
|               |      |                              |                  |

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

| Estimated Revenue |      |      | Recurring<br>or<br>Nonrecurring | Fund<br>Affected |
|-------------------|------|------|---------------------------------|------------------|
| FY16              | FY17 | FY18 |                                 |                  |
|                   |      |      |                                 |                  |
|                   |      |      |                                 |                  |

(Parenthesis ( ) Indicate Expenditure Decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

|              | <b>FY16</b> | <b>FY17</b> | <b>FY18</b> | <b>3 Year<br/>Total Cost</b> | <b>Recurring or<br/>Nonrecurring</b> | <b>Fund<br/>Affected</b> |
|--------------|-------------|-------------|-------------|------------------------------|--------------------------------------|--------------------------|
| <b>Total</b> |             |             |             |                              |                                      |                          |

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

Relationship: HB 83

Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE**

**BILL SUMMARY**

This analysis is neither a formal Attorney General's Opinion nor an Attorney General's Advisory Letter. This is a staff analysis in response to an agency's, committee's, or legislator's request.

Synopsis:

HB 74 implements tier levels for how long a person is required to obtain an ignition interlock device and license based on their alcohol concentration and number of convictions. HB 74 sets out longer periods of time for individuals with an alcohol concentration of 0.24 or greater. HB 74 also adds a few new requirements that must be met before a person's license is reinstated when revoked for a violation of §66-8-102, NMSA 1978 or the Implied Consent Act. HB 74 also addresses individuals who have not obtained an ignition interlock license or installed an ignition interlock device by requiring in essence a "24/7" program (24/7 programs are built around requiring individuals to provide two breath samples a day to ensure they are remaining sober).

**FISCAL IMPLICATIONS**

N/A

**SIGNIFICANT ISSUES**

HB 74 may have consistency issues within itself. For example, HB 74 §66-5-29 does not address outright refusals while HB 74 §66-8-102 (O) does. Another example is, HB 74 §66-5-29 (D) sets the alcohol concentrations for an "unavailable" score at .16 or less, while HB 74 §66-8-102(P) sets it at below .24.

Section 66-5-5 (E) will have to be addressed if HB 74 is going to move forward to conform to HB 74.

HB 74 also discusses "house arrest" and allows for an electronic monitoring device for a person ordered to "house arrest" pursuant to §66-8-102. This is concerning because most "house arrest"/"CCP" programs require electronic monitoring to meet the "official confinement" standard. See, *State v. Duhon*, 2005-NMCA-120. By allowing for electronic monitoring, HB 74

could be opening the door for looser requirements when it comes to “house arrest”/”CCP” programs. Further, HB 74 does not define “house arrest”.

HB 74 §66-8-102 (U) implements in essence a “24/7” program (24/7 programs are built around requiring individuals to provide two breath samples a day to ensure they are remaining sober) for individuals who are required to obtain an ignition interlock license and/or device, and do not. This implementation will address individuals who claim they are not driving to avoid the ignition interlock. However, HB 74 §66-8-102 (U) seems to allow for unlimited 48 hour incarceration sanctions, even if a person’s jurisdiction has been exhausted, which may raise constitutional challenges. Additionally, §66-8-102 (U) does not allow for a longer or shorter sanction.

## **PERFORMANCE IMPLICATIONS**

N/A

## **ADMINISTRATIVE IMPLICATIONS**

N/A

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Relationship: HB 83

## **TECHNICAL ISSUES**

“House arrest” seems to be a term of art that is not defined.

## **OTHER SUBSTANTIVE ISSUES**

N/A

## **ALTERNATIVES**

N/A

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status Quo

## **AMENDMENTS**

N/A